Tacoma Baking Company, Inc. *and* Hannah Ritner *and* Emma Yoder. Cases 19–CA–258566, 19–CA–260381, and 19–CA–263343

March 16, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND RING

The General Counsel seeks a default judgment in this case on the ground that Tacoma Baking Company, Inc. (the Respondent) has failed to file an answer to the consolidated complaint. Upon charges and amended charges filed by employees Hannah Ritner and Emma Yoder on March 30, May 14, June 5, July 21, and September 1, 2020,[1] the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing on September 29 against the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On December 22, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on December 28, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 5, 2021, the Respondent filed a timely response to the Notice to Show Cause with the Board. This response consisted of a letter from Pieter DeVisser, who was identified in the complaint as the Respondent's "Human Resources Director and/or Co-Owner" and who was identified on the letter itself as the Respondent's "Registered Agent." The DeVisser letter, which had previously been sent to the Region in error, did not include an affidavit of service on the parties as required by the Notice.[2] The General Counsel filed a response to the DeVisser letter on January 11, 2021.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively states that unless an answer is received on or before October 13, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 9, advised the Respondent that unless an answer was received by December 16, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer or request an extension of time to file an answer by that date.

Insofar as the Respondent intended the DeVisser letter to be a response to the Notice to Show Cause, it is inadequate not only because it was not duly served on the parties but because it does not even attempt to answer the allegations in the consolidated complaint. The DeVisser letter asserts that DeVisser himself is uncertain as to whether he is legally authorized to respond, represent, or accept service on behalf of the Respondent and that the Board should stay proceedings until ongoing litigation pertaining to the cessation of the Respondent's operations is resolved.[3] These factors, however, do not establish good cause for failing to file an answer to the consolidated complaint. The facts establish that Pieter DeVisser held himself out as the Respondent's registered agent on the letter itself, that he has accepted service on its behalf, including the motion and the consolidated complaint, and that he was aware that an answer to the consolidated complaint was required. The DeVisser letter does not state that he lacked the legal authority to file an answer on behalf of the Respondent; it only asserts that he was not comfortable doing so given the pending litigation. Nor does he state that the Respondent's other owners or agents lacked the legal authority to do so. Finally, the letter does not give any indication that DeVisser had communicated, or attempted to communicate, with any of the Respondent's other owners and had been unable to reach an agreement regarding how to respond to the consolidated complaint.

The DeVisser letter additionally notes that, since August, the Respondent has not been represented by counsel in this proceeding. Although the Board has shown some leniency toward respondents who proceed without the benefit of counsel, the Board has consistently held that the choice to forgo representation by counsel does not

[1] All dates are 2020 unless otherwise indicated.

[2] On January 4, 2021, DeVisser emailed the letter at issue to the Region, and, that same day, the Region informed the Respondent that it would have to file any response with the Board for it to be considered. The next day, DeVisser filed the letter with the Board as the Respondent's purported response to the Notice to Show Cause.

[3] In his letter, Pieter DeVisser states that the Respondent is in litigation in State court with its creditors because of its inability to satisfy its debts. He also states that two owners of the Respondent have filed suit in State court against the Respondent and the other two owners (Jessica DeVisser and himself) alleging mismanagement and disputing ownership and managerial authority. He further reports that the two cases have been consolidated and a receiver appointed by the State court.

establish good cause for failing to file a timely answer. See, e.g., *Headlands Contracting & Tunnelling, Inc.*, 368 NLRB No. 4, slip op. at 1 (2019); *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153–1154 (2003); *Sage Professional Painting Co*., 338 NLRB 1068, 1068–1069 (2003).

The DeVisser letter requests that, under the circumstances, the Board stay its proceedings until the ongoing litigation pertaining to its ownership and financial burdens is resolved. However, the Board has found that assertions of company "turmoil" caused by the sudden closing of an office, "preoccup[ation] with other aspects of [the] business," "bitter stockholders' dispute," "economic necessity," "dire financial straits," and bankruptcy do not constitute good cause for a party's failure to file a timely answer. See *Dong-A Daily North America,* 332 NLRB 15, 15–16 (2000), and cases cited therein.

As a result, in the absence of good cause being shown for the failure to file an answer, we deem the allegations in the consolidated complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a State of Washington corporation with an office and place of business in Tacoma, Washington, where it has been engaged in the retail business of selling bakery and coffee products and services.

In conducting its operations during the 12 months preceding the complaint, a representative period, the Respondent derived gross revenues in excess of $500,000, and purchased and received goods at the facility valued in excess of $50,000 directly from points outside the State of Washington and/or purchased and received goods valued in excess of $50,000 at its facility directly from entities located within the State of Washington, but each of which entities had received the goods directly from points outside the State of Washington.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, the following individuals have held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act or agents of the Respondent within the meaning of Section 2(13) of the Act:

Jessica DeVisser	-	Chief Executive Officer or Co-Owner
Pieter DeVisser	-	Human Resources Director or Co-Owner
Marie Price	-	Chief Operating Officer or Co-Owner

2. About January 24, the Respondent, by Jessica DeVisser, told employees by email that they were creating a toxic workplace by raising their concerns about wages, hours, or other terms and conditions of employment.

3. About January 24, the Respondent, by Jessica DeVisser, threatened employees by email with a meeting with the Respondent's management or other forms of retaliation, because the employees had discussed wages, hours, or other terms and conditions of employment with their coworkers or because they raised such matters with the Respondent's management or supervision.

4. About January 24, the Respondent, by Jessica DeVisser, informed employees by email that they have no place with the Respondent if they raise their concerns about wages, hours, or other terms and conditions of employment.

5. About February 25, the Respondent, by Jessica DeVisser, prohibited employees by email from sending emails or posting on social media their discussions regarding wages, hours or other terms and conditions of employment at the workplace.

6. About March 6, the Respondent, by Jessica DeVisser, threatened employees by email that they would be damaged for negatively commenting about their wages, hours or other terms and conditions of employment with fellow employees or others on social media or, alternatively, prohibited employees from discussing or raising their concerns about wages, hours or other terms and conditions of employment.

7. About March 6, the Respondent, by Jessica DeVisser and Marie Price, prohibited employees from discussing wages, hours, or other terms and conditions of employment at the workplace by telling them to keep pay and wage issues internal rather than publicize or post such discussions on social media and that such discussions are immature and unprofessional.

8. About March 9, the Respondent, by Jessica DeVisser, prohibited employees from discussing terms and conditions of employment by email.

9. About March 9, the Respondent, by Pieter DeVisser, threatened to take legal action against employees because they discussed or raised their concerns about wages, hours, or other terms and conditions of employment on social media.

10. About March 7, the Respondent terminated the employment of its employee Ritner.

11. About March 12, the Respondent terminated the employment of its employee Yoder.

12. The Respondent engaged in the conduct described above in paragraphs 10 and 11 because its employees Ritner and Yoder engaged in protected concerted activities, or to discourage employees from engaging in these or other protected concerted activities.

CONCLUSION OF LAW

By the conduct described above in paragraphs 2 to 11, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by discharging Hannah Ritner and Emma Yoder for engaging in protected concerted activity, we shall order the Respondent to offer them full reinstatement to their former jobs or, if the jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. We also shall order that the Respondent make Ritner and Yoder whole, with interest, for any loss of earnings and other benefits that they may have suffered as a result of the unlawful discharges. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with our decision in *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Ritner and Yoder for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

We shall order the Respondent to compensate Ritner and Yoder for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and to file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition, we shall order the Respondent to file with the Regional Director for Region 19 a copy of Ritner's and Yoder's corresponding W-2 forms reflecting the backpay awards.[4]

The Respondent shall also be required to expunge from its files any and all references to Ritner's and Yoder's discharges and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Tacoma Baking Company, Inc., Tacoma, Washington, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Discharging employees because they discuss wages, hours, or other terms and conditions of employment with fellow employees or others on social media.

(b) Discharging employees because they create and circulate a fundraising web page to assist fellow employees and to voice concerns about pay or other terms and conditions of employment on social media.

(c) Threatening employees with a meeting with management, or with any other form of retaliation, because they discuss wages, hours, or other terms and conditions of employment with coworkers or because they raise those issues with management or supervision.

(d) Telling employees that they are creating a toxic workplace by raising issues about wages, hours, or other terms and conditions of employment.

(e) Restricting employees' right to discuss wages, hours, or other terms and conditions of employment at the workplace by directing them to stop emailing or posting such discussions on social media.

(f) Threatening employees that they will be damaged or disciplined because they discuss wages, hours, or other terms and conditions of employment with fellow employees or others on social media.

(g) Restricting employees' right to discuss wages, hours, or other terms and conditions of employment at the workplace by telling them to keep pay and wage issues internal rather than publicize or post such discussions on

[4] In *Cascades Containerboard Packaging—Niagara*, 370 NLRB No. 76, slip op. at 2–3 (2021), we adopted this remedy and held that it would apply to all pending and future cases involving backpay awards. Accordingly, we apply it here.

social media and that such discussions are immature and unprofessional.

(h) Threatening to take legal action against employees because they discuss wages, hours, or other terms and conditions of employment on social media.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Hannah Ritner and Emma Yoder immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Hannah Ritner and Emma Yoder whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, in the manner set forth in the remedy section of this decision.

(c) Compensate Hannah Ritner and Emma Yoder for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s).

(d) File with the Regional Director for Region 19 a copy of Hannah Ritner's and Emma Yoder's corresponding W-2 forms reflecting the backpay awards.

(e) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of Hannah Ritner and Emma Yoder, and within 3 days thereafter, notify them in writing that this has been done and that their discharges will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Tacoma, Washington, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 24, 2020.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply with this Order.

Dated, Washington, D.C. March 16, 2021

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Lauren McFerran, Chairman

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Marvin E. Kaplan, Member

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John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[5] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge you because you discuss your wages, hours, or other terms and conditions of employment with your fellow employees or others on social media.

WE WILL NOT discharge you because you create and circulate a fundraising web page to assist fellow employees and to voice concerns about your pay or other terms and conditions of employment on social media.

WE WILL NOT threaten you with a meeting with management, or with any other form of retaliation, because you discuss wages, hours, or other terms and conditions of employment with your coworkers or because you raise those issues with management or supervision.

WE WILL NOT tell you that you are creating a toxic workplace by raising issues about wages, hours, or other terms and conditions of employment.

WE WILL NOT restrict your right to discuss wages, hours, or other terms and conditions of employment at the workplace by directing you to stop emailing or posting such discussions on social media.

WE WILL NOT threaten that you will be damaged or disciplined because you discuss wages, hours, or other terms and conditions of employment with fellow employees or others on social media.

WE WILL NOT restrict your right to discuss wages, hours, or other terms and conditions of employment at the workplace by telling you to keep pay and wage issues internal rather than publicize or post such discussions on social media and that such discussions are immature and unprofessional.

WE WILL NOT threaten to take legal action against you because you discuss wages, hours, or other terms and conditions of employment on social media.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Hannah Ritner and Emma Yoder full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Hannah Ritner and Emma Yoder whole for any loss of earnings and other benefits resulting from their unlawful discharges, less any interim earnings, plus interest, and WE WILL also make Ritner and Yoder whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Hannah Ritner and Emma Yoder for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

WE WILL file with the Regional Director for Region 19 a copy of Hannah Ritner's and Emma Yoder's corresponding W-2 forms reflecting the backpay awards.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to Hannah Ritner's and Emma Yoder's unlawful discharges, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

TACOMA BAKING COMPANY, INC.

The Board's decision can be found at http://www.nlrb.gov/case/19-CA-258566 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.